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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: JUL 03 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

for Myro L. Rose
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), in order to employ him as a part-time music director.

The acting director denied the petition, finding that the petitioner failed to establish that the beneficiary had been performing full-time work continuously in the proffered position for the two-year period immediately preceding the filing of the petition. The acting director also determined that the petitioner had failed to establish that the position qualified as that of a religious worker.

On appeal, counsel for the petitioner asserts that the position of music director is a religious occupation that relates to a traditional religious function. Counsel also asserts that the beneficiary is currently engaged in a full-time religious occupation. On appeal, the petitioner submits a seven page letter in which it states that the beneficiary intends to begin studies in anticipation of becoming an Episcopal priest therefore he cannot work for the petitioner on a full-time basis.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary is a citizen of Australia. The beneficiary last entered the United States on April 5, 1993 as a J-1 exchange visitor.

The first issue to be addressed in this proceeding is whether the beneficiary had been continuously carrying on a religious occupation for the two years preceding the filing of the petition.

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work,

or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on September 27, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously working as a music director since at least September 27, 1998.

The evidence reflects that the beneficiary was working 40 hours a week from September 27, 1998 until December 26, 1999 with Valencia United Methodist Church (a previous employer). The evidence also reflects that the beneficiary terminated employment with Valencia United Methodist Church as of December 31, 1999. The evidence further reflects that the beneficiary commenced employment with the petitioner from March 15, 2000 through September 17, 2000 on a part-time basis (except for two weeks in which the beneficiary worked 35 hours a week).

The acting director determined that the evidence is insufficient to establish that the beneficiary has been performing full-time work as a music director for the two-year period immediately preceding the filing of the petition. The AAO concurs.

The petitioner submits a letter written by two of its officials stating that the beneficiary was the recipient of a previously approved religious worker petition filed by a different petitioner in which the Bureau waived the two-year full-time work requirement and requests that the Bureau waive the requirement again.

The Bureau lacks the authority to waive the two-year requirement. The beneficiary's prior employer's petition may have been approved in error. The petitioner has failed to overcome this portion of the acting director's objections.

The next issue to be addressed in this proceeding is whether the proffered position is a qualifying religious occupation.

A petitioner must establish that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in the regulations. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function.

The Bureau interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent full-time, salaried occupation within the denomination.

In the instant case, the petitioner asserts, "the function of music in the worship life of the Episcopal Church is integral to the Worship and Liturgy." The petitioner states further:

It is the Music Director's responsibility to lead the choir and the congregation in these sung portions of the liturgy and to prepare and train the choir, cantors and other musicians concerning correct liturgical practice of the liturgy. It is also the Music Director's responsibility to prepare appropriate worship services as requested by the Rector, ensuring that the liturgical

content complies with the Canons and Constitution,
and the Rules of Order of the Episcopal Church.

After a review of the record, it is concluded that, in this case, the petitioner has not established that the position of music director constitutes a qualifying religious occupation.

The petitioner submitted no documentation to demonstrate that the position of music director is a traditional full-time paid occupation in its denomination. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner asserted that music is integral to its worship practices, but did not provide verification from an authorized official of the denomination that permanent salaried employment in such an occupation is a traditional function within its denomination. Although the petitioner asserts that the position requires specific religious training, it failed to provide corroborating evidence. The petitioner has also failed to overcome this portion of the director's objections. For the reasons stated, the petition may not be approved.

Beyond the decision of the acting director, the petitioner has not established that the beneficiary has been a member of the same denomination for the two years preceding the filing of the petition as required by 8 C.F.R. 204.5(m)(3). As the appeal will be dismissed on the grounds discussed, this issue need not be examined further.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.